

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE )  
SUBSTANTIAL DEVELOPMENT PERMIT )  
ISSUED BY THE CITY OF BOTHELL TO )  
BOTHELL STATION DEVELOPMENT )  
CORPORATION )

PROTECTION FOR RIVER AND INLAND )  
ENVIRONMENT FOR BOTHELL (PRIE), )

Appellants, )

v. )

CITY OF BOTHELL, et al., )

Respondents, )

STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY AND )  
SLADE GORTON, ATTORNEY GENERAL, )

Intervenors. )

SHB No. 79-10

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, an appeal from the issuance of a substantial  
development permit to Bothell Station Development Corporation by the  
City of Bothell, came before the Shorelines Hearings Board, Dave J.  
Mooney, Chairman, Robert E. Beaty, Chris Smith, Rod Kerslake, and

David Akana (presiding), in Bothell, Washington on May 23, 24,  
25, and 31, 1979.

Appellant PRIE was represented by its attorney, Janet E. Quimby;  
respondent City of Bothell was represented by its attorney, Wayne  
Tanaka; respondent Bothell Station Development Corporation was  
represented by its attorney, Joel Haggard; Department of Ecology and  
the Attorney General, intervening on behalf of the appellants, were  
represented by Robert V. Jensen, Assistant Attorney General.

Having heard the testimony, having examined the exhibits,  
having considered the parties' pre-hearing briefs, contentions, and  
arguments, and being fully advised, the Shorelines Hearings Board  
makes these

#### FINDINGS OF FACT

##### I

This matter arises from the issuance of a shoreline substantial  
development permit to the Bothell Station Development Corporation  
(hereinafter "Corporation") by the City of Bothell (hereinafter "City")  
for the construction of a 45-unit condominium complex of three buildings,  
three stories high, of 15 units each, along the south side of the  
Sammamish River in the City of Bothell. Appellant appealed the  
permit issuance to the Bothell Shorelines Hearings Board, as provided  
by local ordinance, that body considered the matter and entered  
Findings of Fact, Conclusions of Law and Order affirming the decision of  
the Shorelines Administrator of the City and approved the substantial  
development permit, with additional conditions. The appellant then

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1 appealed the actions of the City and the Bothell Shorelines Hearings Board  
2 to this Board.

## 3 II

4 Respondent Corporation owns approximately 19 acres of real property  
5 on both the north and south shores of the Sammamish River in the City  
6 of Bothell; the nine acres located on the north shore have been denominated  
7 Brackett's Landing Residential Planned Unit Development by the Corporation.  
8 The property on the south shore (over ten acres total) has been divided  
9 into three parcels: Bothell Station Commercial Planned Unit Development  
10 covers five acres on the westerly side of the property; Bothell Station  
11 Planned Unit Development Phase A, covering 2.91 acres, lies southeast of the  
12 Commercial Planned Unit Development on the south bank of the river; Bothell  
13 Station Planned Unit Development Phase B, abuts Phase A to the south.  
14 Phase A is the proposed action involved in the appeal herein: however, the  
15 permit as issued covers 5.41 acres (hereinafter referred to as the "site")  
16 which includes the property of Phase B (across which access for emergency  
17 services will be provided for the Phase A development.) None of the  
18 Corporation's developments has yet been built; a number of residential units  
19 potentially available under the zoning code but not a part of Phase A  
20 development are proposed to be transferred to the Phase B development. No  
21 structures are currently on the site.

## 22 III

23 The site covered by the permit is located within what was the  
24 flood plain of the river prior to flood control channelization by the  
25 Army Corps of Engineers in 1964. The river waters presently flow slowly

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1 through the channel dug by the Corps; the bank sides are either covered  
2 with long grasses or exposed earth and quarry spalls. The site is not  
3 in its original condition. The land adjacent to the site is primarily  
4 residential with some undeveloped properties in the area. Nine-tenths  
5 of an acre is zoned agricultural, which allows one dwelling unit per  
6 acre; the remainder of the site is zoned multi-family residential,  
7 requiring a minimum of 1400 square feet of lot area for each residential  
8 unit proposed and allowing up to 50% lot coverage by buildings. The City  
9 determined that Phase A could be built on the site under the existing zoning.  
10 The site is in an area designated an Urban Environment by the Bothell  
11 Shoreline Master Program.

#### 12 IV

13 In April, 1978, Corporation submitted an application for a substantial  
14 development permit for a proposed project on "5.41 acres bounded by the  
15 Sammamish River, Riverside Place and East Riverside Drive, Bothell,  
16 Washington." (Exhibit A-2). No drainage plan was submitted at that time.  
17 A site plan for all of the Bothell Station project, showing the planned  
18 structures of the Commercial PUD, of Phases A & B and of Brackett's  
19 Landing, was also submitted at that time (Exhibit A-2a). Phase B was then  
20 planned to consist of 110 condominium units in an 11-story high rise set  
21 more than 200 feet from the shoreline; the Corporation has since eliminated  
22 the tower from the plans. The commercial PUD was designed to contain a  
23 two-story restaurant and three, two-story office/retail buildings.  
24 Brackett's Landing was to consist of 60 low-rise condominium units and 100  
25 high-rise condominium units. Although the initial permit application  
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1 covered development of both Phase A and Phase B, Corporation later withdrew  
2 the Phase B development portion of the application; the application for  
3 a shoreline substantial development permit for the Phase A development  
4 on the 5.41 acre site was approved on November 16, 1978.

5 V

6 The City official responsible for SEPA compliance determined that the  
7 proposal could be phased, since he considered the Phase A development could  
8 be more adequately reviewed without considering the impacts resulting from  
9 Phase B development as well. He felt that if Phases A & B were handled  
10 together, the high-rise condominium tower planned for Phase B would dominate  
11 any discussion, slowing the approval process for Phase A. He further  
12 considered that the traffic impacts on the area resulting from a completed  
13 Phase A could be more accurately assessed when processing an application  
14 for Phase B. PRIE contends that such phasing of the environmental impact  
15 statement prevents a comprehensive analysis of environmental impacts or  
16 of their cumulative effects and precludes the decision-maker from reviewing  
17 the entire proposal before commitments are made to any portion of it.

18 VI

19 The Bothell Shoreline Master Program (hereinafter "BSMP") was adopted  
20 by the City Council of the City of Bothell and approved by the Department  
21 of Ecology (hereinafter "DOE") and is identified in the record as  
22 Exhibit A-1. Appellants argue that the proposed action 1) does  
23 not give preference to uses which result in long-term rather than  
24 short-term benefits, more particularly in the area of protection and  
25 improvement of water quality; 2) does not follow the management system which

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1 action, in conjunction with any development of Phase B, the Commercial  
2 Phase and Brackett's Landing, will cause further deterioration of water  
3 quality. Corporation contends and has presented evidence that the effect  
4 upon the water quality will be negligible due to proposed filtering and  
5 drainage systems and landscaping. Appellant has not shown that Phase A  
6 will have a significant effect upon the water quality. Any effects  
7 resulting from other phases of the proposal are not presently known  
8 and are not discussed in the environmental impact statement.

#### 9 VIII

10 The site has a high water table which is at times at the  
11 surface. Runoff from Norway Hill to the south floods two year-round  
12 creeks which then overflow the railroad tracks adjacent to the 5.41 acre  
13 site. Occasionally residents in the immediate vicinity experience  
14 flooding of their properties. A year-round pond or marsh lies on the  
15 Phase B portion of the site near the railroad tracks.

#### 16 IX.

17 The BSMP contains Goal 3 relating to the Shoreline Use Element:  
18 "Provide a management system which will plan for and permit all reasonable  
19 and appropriate uses by providing a system of priorities." The fourth  
20 preference, water oriented uses, is defined as "those uses which do not  
21 depend on a shoreline location for their existence but enjoy aesthetic  
22 amenities by a shoreline location;" multi-family dwellings are cited as  
23 an example of such a use.

#### 24 X

25 The site is covered with grasses, red alder, black

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1 cottonwood, willow and scotch broom. All existing vegetation would  
2 be removed and would be replaced by a mixture of evergreen and deciduous  
3 trees, native and ornamental shrubs, and lawns. Incidental to such  
4 landscaping would be the importation of fill dirt, although the amount  
5 location of such fill material has not yet been determined.

#### 6 XI

7 The Sammamish River serves as a passageway for migrating salmonid  
8 fishes, including sockeye, silver, chinook salmon and steelhead trout.  
9 With a properly maintained and operated drainage and filtering system,  
10 there will be no significant impact upon the fish.

11 The wildlife habitat on the site would be displaced with the  
12 completion of the proposed action; some species compatible with the  
13 developed site would probably return after construction was completed.

#### 14 XII

15 PRIE contends that the traffic resulting from the proposed action  
16 would overburden the existing roads in the area and create hazardous  
17 conditions on East Riverside Drive and on the 102nd Street Bridge  
18 leading to downtown Bothell. It further contends that the traffic resu  
19 from the commercial PUD and Phase B should be considered in assessing  
20 the impact of the development. Corporation evaluated the traffic  
21 volumes resulting from the Phase A development only, and concluded that  
22 the effect would be insignificant. The Board is unable to determine th  
23 impact of traffic from all phases, i.e., A, B and Commercial, of the  
24 proposals.



XIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Shorelines Hearings Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the persons and over the subject matter of this proceeding.

II

In an appeal of any permit issuance, the party attacking the validity of such permit has the burden of proof. RCW 90.58.140(6). See, e.g., King County Chapter, Washington Environmental Council v. City of Seattle and Department of Highways, SHB No. 11 (1973).

III

The permit at issue herein is tested for consistency with the Bothell Shorelines Master Program and the provisions of the Shoreline Management Act. RCW 90.58.140(2)(b). It must also comply with the State Environmental Policy Act. RCW 43.21C.030.

IV

PRIE contends that phasing the environmental impact statement to cover the Phase A development only violates WAC 197-10-060, which requires the lead agency to consider the total proposal, including its direct and indirect impacts, in the threshold determination and EIS preparation. The "total proposal" is defined as "the proposed action,

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1 together with all proposed activity which is functionally related to it."

2 (Emphasis supplied.) Future activities are "functionally related"  
3 to the proposed action if:

4       "(2) The future activity is an expansion  
5       of the present proposal, facilitates operation  
6       of the present proposal or is necessary thereto;  
7       or (b) The present proposal facilitates or is  
8       a necessary prerequisite to future activities."

9 The regulation goes on:

10       "The fact that future impacts of a proposal  
11       will require future governmental approvals  
12       shall not be a bar to their present  
13       consideration, so long as the plans for  
14       those future elements are sufficiently  
15       specific to allow some evaluation of their  
16       potential environmental impacts."  
17       WAC 197-10-060(2)(b). (Emphasis supplied.)

18 PRIE contends that the total proposal includes not only the Phase A  
19 development, but also the Phase B development, the Commercial PUD,  
20 and Brackett's Landing; the future activities expand the Phase A  
21 development. Consequently, according to this argument, the final EIS  
22 is inadequate due to improper phasing.

23       At the time of the initial application for a substantial  
24 development permit, Corporation was applying for a permit to develop  
25 5.41 acres, or both Phases A & B. The City official responsible for  
26 SEPA compliance determined that phasing of the project was  
27 proper because 1) he considered that approval of Phase A alone would  
be faster than if both phases were considered together, 2) the traffic  
resulting from the completed Phase A would be more accurately measurable  
when the application for Phase B was processed, and 3) the proposed

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1 Phase B tower would be so controversial that it would dominate the  
2 discussion of both Phases A & B. Although the permit as issued covered  
3 the property of Phase A & B, the Corporation later withdrew the  
4 portion of the application relating to the Phase B development.

5 At the time of the initial application, the Corporation had  
6 definite plans for Phase B, the Commercial PUD and Brackett's Landing:  
7 although Corporation's plans were later drastically altered, the site  
8 plan was specific as to the number and types of buildings for the  
9 different phases, even if tentative. (Exhibit A-2a). The zoning was known  
10 Furthermore, Corporation's action of including Phase B in its initial  
11 application indicates that the plans were sufficiently specific to allow  
12 some evaluation of potential environmental impacts, if only of Phase B. Th  
13 three projects on the south side of the river, excluding Brackett's Landing  
14 have several common factors, including but not limited to common ownership,  
15 contiguity, common access roads, common emergency access roads, common sewe  
16 lines, and traffic generation. Applying WAC 197-10-060, it appears that th  
17 proposal is only part of a larger plan to be completed in the future. As a  
18 result, the environmental impact statement which discussed the impacts of  
19 the Phase A development alone prevents comprehensive analysis of the  
20 environmental impacts and precluded the decision-maker from reviewing the  
21 entire proposal prior to committing to the Phase A development. Since the  
22 phasing was improper, the EIS is inadequate, and the permit was improperly  
23 issued.

24 V

25 The permit for Phase A is consistent with the BSMP, which provides  
26 that the multi-family development proposed is a permitted use of the  
27 shoreline within the urban environment, although it

1 is not the most preferred use. Chapter III, Section B.

2 VI

3 The BSMP encourages provisions for physical and visual public acce  
4 in shoreline development. Chapter III, Section D. The design of  
5 Phase A places the structures back from the river itself, and provides  
6 for a foot path along the river's edge, available to residents and the  
7 general public alike.

8 VII

9 The BSMP aims to "preserve and restore natural resources which  
10 make the Bothell shoreline uniquely attractive and valuable to a  
11 large ecosystem." It also cites the policy to restore the vegetative  
12 cover most appropriate to the Bothell shoreline for its aesthetic and  
13 recreational value. Chapter III, Section G. The BSMP further provides  
14 that removal of existing vegetation within the setback area is to be  
15 allowed only where the proposed modifications will result in improving  
16 existing shoreline appearance and stability. Chapter VI, Section J.  
17 The general landscaping plans for the site would replace the present  
18 undistinguished cover and result in an improvement of the shoreline  
19 appearance, thus meeting the requirements of the BSMP,

20 VIII

21 The City of Bothell's Ordinance 843 requires that a drainage plan  
22 be submitted with the application for a substantial development permit  
23 Corporation did not do so. Nor did the application "identify the  
24 source, composition and volume of fill material" as required by  
25 WAC 173-14-110. Consequently, this permit should be remanded to the

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1 City of Bothell for its amendment to include those matters. PRIE has  
2 not shown that the proposed substantial development would be otherwise  
3 inconsistent with the BSMP and the provisions of the SMA.

4 IX

5 Although we find the environmental impact statement to be  
6 inadequate with respect to phasing of the proposal and the resulting  
7 impacts, if no further development were to occur on the site and on the area  
8 designated commercial, the environmental impact statement would be  
9 adequate. As such, if the substantial development on the  
10 site is limited only to the proposed 45-unit condominiums, the City's  
11 action can be affirmed subject to compliance with Conclusion of Law VIII.  
12 If, however, the Corporation or its successors desire to further  
13 develop the 5.41 acre site or the commercial area, as the record indicates,  
14 the environmental impact statement is inadequate and should be  
15 supplemented or rewritten to include the total proposal, including  
16 Phase A & B and the Commercial PUD after which Bothell may consider  
17 whether a permit for any development on the properties would be appropriate  
18 in such case, the permit for Phase A should be vacated.

19 X

20 Any Finding of Fact which should be deemed a Conclusion of  
21 Law is hereby adopted as such.

22 From these Conclusions, the Board enters this

23 ORDER

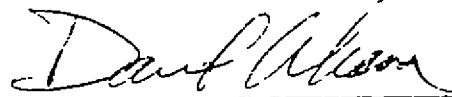
24 The shoreline substantial development permit issued to Bothell  
25 Station Development Corporation is remanded to the City of Bothell in  
26 accordance with Conclusion of Law IX.

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1 DATED this 19<sup>th</sup> day of July, 1979.

2 SHORELINES HEARINGS BOARD

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5   
6 CHRIS SMITH, Member

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8 DAVID AKANA, Member

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10 ROBERT E. BEATY, Member

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12 RODNEY KERSLAKE, Member  
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